IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.786 OF 2003

Deepak Bhagwan Masurkar.....PETITIONER

Versus

1.Mohammed Hussain Abdullabhai & Ors..Respondents

Ms. Shobhana Gopal, for the petitioner
None for the respondents

CORAM: F.I. REBELLO J.
DATE :20th December, 2004

P.C.:

. The respondents though served have put in appearance.

The petitioner had filed an application under Section 33-C(2) of the I.D. Act for recovery of notice pay, retrenchment compensation and other consequential benefits pursuant to termination of his services. The amounts claimed have been set out in para.5 of the application. A written statement was filed on behalf of the respondent Nos. 2 and 4. The other respondents though served did not choose to file their written statement. The petitioner examined himself and was cross examined. By judgment dated 2nd February, 2002 the learned Labour Court was firstly pleased to hold that the petitioner herein was unable to prove that his services had come to an end. The learned Tribunal thereafter held that in the proceedings for arbitration between the erstwhile partners though the petitioner was attending the proceedings he chose not to file his claim. The learned Labour Court then held that the petitioner has no existing right to claim notice pay and retrenchment compensation. In so far as bonus is

concerned a finding of fact is recorded that the provisions of the Payment of Bonus Act are not attracted. In so far as contention of the respondents that the petitioner was not a workman within the meaning of Section 2(s) of the I.D. Act, that was rejected. The learned Labour Court was, however, pleased to allow the claim in so far as encashment of leave benefits and to that extent allowed the application. It is this order which is the subject matter of the present petition.

2. Heard learned Counsel for the petitioner on various points which have been urged before me. The consent terms based on which the Award dated 27th April, 2000 was passed is on record. In clause 6 of the consent terms there is an admission that the petitioner along with 3 other employees were in the service of the partnership of which respondent Nos.1 to 4 were partners. There is a further admission that the petitioner was in service of the firm for about 25 years prior to 1994. There is a further admission that the services of the petitioner along with others came to an end on February 26, 1994. It is, therefore, clear from the consent terms itself which are on record that the services of the petitioner had come to an end on February 26, 1994. Once that be the case the learned Labour Court clearly was wrong in holding that the petitioner herein had not been able to establish that his services had been terminated. This finding is clearly perverse. It must, therefore, be held that the services of the petitioner had come to an end on February 26, 1994 and at

that time he had put in 25 years of service.

3. Considering the finding it is really not necessary to consider or deal with the argument which deal with the findings recorded by the Labour Court that merely because the firm had been dissolved and the partners of the firm had ceased to be partners of the firm it cannot be said that the services of the employees had come to an end by way of termination. On the firm being dissolved the partnership comes to an end. All that remains is in the matter of taking accounts and disposal of the assets of the partnership. The firm cannot carry on new business except if and at all to wind up the business which it was allowed to carry on if possible. That itself would not be relevant on the facts of this case as the consent terms itself provided that the services of the petitioner and other employees had come to an end.

4. The second finding which is recorded to deny the petitioner his dues is that there were proceedings in arbitration and that the petitioner was participating the said proceedings and that he had not filed his claim. The learned Labour Court totally misdirected itself in law on this point. Only those parties can be parties in Arbitration proceedings who are parties to the arbitration agreement. No where was any material produced on record to show that the petitioner employee was also a party to the Arbitration agreement. Once that be the case, whether the petitioner workman appeared in person before the arbitral Tribunal or not would be

immaterial. The learned Arbitrator even if the petitioner had any claim and had filed his claim would have no jurisdiction to entertain the claim considering that the petitioner was not a party to the Arbitration Agreement. That finding of the learned Labour Court on that count also must be rejected.

5. The learned Labour Court then proceeded to hold that as there is no termination there is no right to claim notice pay and retrenchment compensation. Once a finding is recorded that there is a termination, the said finding of the labour Court that there is no termination also must be set aside. The petitioner in his evidence had deposed that last drawn wages was Rs.4383/-. That was not disputed. It is also not disputed that the petitioner had worked for 25 years. Considering that the claim of the petitioner in the sum of Rs.4,383/- as also retrenchment compensation at the rate of 15 days wages for every completed year of service in a sum of Rs.52,216/- had to be allowed. The learned Labour Court had only allowed the claim of the petitioner in the sum of Rs.32,249/-. Considering the findings now recorded the petitioner will be entitled to Rs.80,748/- being notice pay, one month retrenchment compensation at the rate of 15 days for 25 years of service and leave encashment.

6. The petitioner has also claimed interest. Considering that the application was filed in the year 2001 simple interest at the rate of 8% per annum from 1st April, 2001 can be awarded in favour of the petitioner herein on the principal

sum of Rs.82,748/- till the amount is paid.

7. Pursuant to the orders of this Court the amount is in the hands of the Receiver. The Receiver on the petitioner herein filing a certified copy of the judgment to pay to the petitioner the aforesaid sum along with interest as set out earlier.

8. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)